FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 793 OF 2004.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	Court's or Judge's orders

S.S.Patwardhan for the appellant.

G.S.Godbole for respondent Nos.1 to 4.

CORAM: V.C.DAGA,J.

DATED: 14th September 2004.

P.C.:

. Heard.

. This appeal is directed against the order dated 30th June, 2004 passed by the Second Joint Civil Judge, Senior Division, Solapur rejecting application under order 38 rule 5 of C.P.C. moved by the appellant/plaintiff in Special Civil Suit No.351 of 2003.

. The appellant/ original plaintiff has filed suit being Special Civil Suit No.351 of 2003 for recovery of Rs.36,47,072/- together with interest

from the defendants. The plaintiff has admitted receipt of Rs.13,00,000/- only as per the terms of the development agreement. According to the plaintiff, the remaining amount of Rs.25,37,600/- was to be paid after six months of execution of the development agreement which was executed on 25th March, 1997. The defendants committed default. Therefore, appellant/ plaintiff filed present suit, in which, he moved an application under order 38 rule 5 of C.P.C. specifying his claim in general and, particularly, stating therein as follows:

> " It is reliably learnt that huge amount is still due from and payable by Indian Overseas Bank, Branch - Solapur. Similarly, huge amount is also due from and payable by Dr.Manoj Jain, Dr.Nilima Manoj Jain, Dr.Nitin Mhaske, and Dr.B.S.Kolur to defts."

It is stated in the application that necessary affidavit has been filed in support of the application. However, no copy of the affidavit is produced on

record. In spite of repeated demands, learned counsel could not produce the same. In the circumstances, matter was heard putting the appellant on notice that absence of production of affidavit in support of application would lead this Court to draw an inference that no such affidavit was filed. In the aforesaid backdrop this appeal was heard.

. Having heard learned counsel for the appellant, having examined the pleadings incorporated in the application under order 38 rule 5 of C.P.C., it is absolutely clear that the application is slip-shod application. No particulars and/or details are to be found in the application. No ingredients of order 38 rule 5 are to be seen in the application. In the circumstances, no fault can be found with the impugned order.

. The appeal, is, thus, dismissed in limine with no order as to costs.

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